

# **Exhibit A**

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CASE #: 23-2-14872-0 SEA

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

70TH AND GREENWOOD AVE, LLC a  
Washington limited liability company,

Plaintiff,

v.

AGCS MARINE INSURANCE COMPANY,  
an Illinois company.

Defendant.

Case No.

**COMPLAINT**

Plaintiff 70th and Greenwood Ave, LLC alleges as follows:

**I. PARTIES**

1. Plaintiff 70th and Greenwood Ave, LLC ("70th and Greenwood" or "Plaintiff,"), is a Washington limited liability company.

2. Defendant AGCS Marine Insurance Company ("AGCS" or "Defendant") is, on information and belief, an Illinois corporation.

**II. JURISDICTION AND VENUE**

3. The Court has personal jurisdiction over AGCS because AGCS purposely availed itself of the benefits and protections of the State of Washington by selling and delivering insurance policies to 70th and Greenwood, a King County resident.

4. The Court has subject matter jurisdiction over this dispute pursuant to

1 RCW § 2.08.010.

2 5. Venue is proper in this court pursuant to RCW § 4.12.025(1) because AGCS  
3 conducted business in King County by selling an insurance policy to a King County resident,  
4 70th and Greenwood, insuring 70th and Greenwood's property located in King County,  
5 Washington.

6 **III. FACTS**

7 **A. The Project.**

8 6. 70th and Greenwood is the owner and developer of the "Shared Roof" project (the  
9 "Project").

10 7. The Project, located in Seattle's Phinney Ridge neighborhood, is a mixed-use  
11 apartment building with five (5) commercial spaces on the first floor and thirty-five (35)  
12 residential units on floors two through five.

13 **B. The all-risks builder's risk policy purchased by 70th and Greenwood from**  
14 **AGCS.**

15 8. 70th and Greenwood paid a substantial premium to AGCS in exchange for a  
16 "builder's risk" insurance policy (the "Policy") promising that AGCS "will pay for direct  
17 physical 'Loss' to 'Covered Property' from any of the 'Covered Causes of Loss'."

18 9. The term "Loss" is defined to mean "direct, physical loss, destruction or damage  
19 caused by a Covered Cause of Loss external to any Covered Property."

20 10. "Covered Property" is described in the Policy's declarations as the "construction  
21 of a 5-story wood frame apartment building" at the Project's mailing address.

22 11. The term "Covered Causes of Loss" is defined to mean "Risks of Direct Physical  
23 Loss or Damage to Covered Property from any external cause except those causes of loss listed  
24 in the Exclusions."  
25  
26

12. Taking these definitions and descriptions together, the Policy's primary insuring clause provides that AGCS "will pay for direct physical loss, destruction or damage to the Project from any external cause except those causes of loss listed in the exclusions."

13. As a result, the Policy is an "all-risks" insurance policy. All-risk policies "provide coverage for all risks unless the specific risk is excluded," and thereby "shift the risk of loss away from [the insured] and place it upon an insurer." *Vision One, LLC v. Philadelphia Indem. Ins. Co.*, 174 Wn.2d 501, 514, 276 P.3d 300, 306 (2012) (internal citations omitted).

14. With regard to the cost of repairing or replacing "Loss," the Policy's per occurrence limits are \$13,500,000.

15. The Policy, through a "Builder's Risk Delay of Occupancy or Use endorsement, provides an additional \$1,000,000 of coverage for, among other things, "Soft Costs."

16. The Policy, through a Builder's Risk Plus" endorsement, then also provides an additional \$5,000,000 of coverage per occurrence for "'Loss' from rain, snow, sleet, sand or dust to property while in the open and unprotected awaiting installation or construction."

17. With regard to exclusions, while the Policy provides that AGCS will not pay for "Loss" caused by or resulting from defective, faulty or inadequate workmanship or construction, the Policy states that AGCS will pay for "'Loss' to other Covered Property which is free of the defective, faulty or inadequate condition ... but is damaged in consequence thereof."

#### C. 70th and Greenwood's claim to AGCS and its investigation.

18. In December, 2021 the Project's construction manager, BNB Builders ("BNB"), informed 70th and Greenwood that it had discovered potentially significant water intrusion and damage caused by the same.

19. After BNB performed an initial, limited investigation, 70<sup>th</sup> and Greenwood opened a claim<sup>1</sup> with AGCS regarding the newly discovered damage.

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<sup>1</sup>AGCS opted to treat the claim as an extension of a claim it was currently adjusting regarding damage to elevator equipment and weather-resistant barrier.



1           20. In turn, AGCS elected to use a third-party adjusting company, Sedgwick Claims  
2 Management Services (“Sedgwick”), to investigate and handle 70th and Greenwood’s claim.

3           21. On information and belief, despite Sedgwick’s unreasonable and poor claims  
4 handling performance—performance that has resulted in thousands of bad faith lawsuits being  
5 filed by policyholders against insurers in the United States alone—AGCS performs no, or only  
6 minimal, oversight over Sedgwick’s claims handling.

7           22. The Sedgwick adjuster initially assigned to the claim, Bradley Deforest, agreed to  
8 use Lisa Moe of Amento Group to investigate the damage giving rise to 70th and Greenwood’s  
9 claim.

10           23. Amento Group is a well-respected building envelope forensics and investigation  
11 firm and Ms. Moe, an architect by trade, has over eighteen years of experience performing  
12 investigations into the cause and fact of water intrusion/water damage and developing scopes of  
13 repair for water intrusion/damage.

14           24. As a result of Mr. DeForest’s agreement, 70<sup>th</sup> and Greenwood instructed Amento  
15 Group to perform the investigation of the damage (including its cause and magnitude) and to  
16 develop a scope of repair.

17           25. On or about February 4, 2022, Mr. Dale informed Mr. DeForest that Amento  
18 Group believed that the “majority, maybe all” of the exterior sheathing “will need to be  
19 replaced.”

20           26. Mr. DeForest responded to Mr. Dale by stating “I don’t see any issue with you  
21 doing whatever necessary to expedite your repairs.”

22           27. In the same email, Mr. DeForest also asked his colleague, David Colucci, whether  
23 any reinspection was required. Mr. Collucci responded “No re-inspection necessary.”

24           28. Accordingly, as of February 4, 2023, (1) Mr. DeForest’s had agreed to use Ms.  
25 Moe to discharge AGCS’s obligation to reasonably investigate 70th and Greenwood’s claim, (2)  
26 Mr. Collucci had represented that that no reinspection was needed by ACGS; and (3) Mr.

DeForest had represented that, at a minimum, the damaged sheathing was covered and that 70th and Greenwood should proceed with its repair.

29. Notwithstanding the forgoing representations, AGCS reversed itself a few weeks later as the financial magnitude of 70th and Greenwood's "Loss" became increasingly clear.

30. At that point, in late February, 2022, AGCS, through Sedgwick, retained Rocco "Rocky" Romero of Wiss, Janney, Elstner Associates, Inc ("WJE") as its lead investigator/building envelope consultant.

31. On information and belief, WJE/Mr. Romero were retained (1) due to their long history of collaborating with Sedgwick and insurers like AGCS to deny policyholder claims and/or limit the payment of benefits to policyholders and (2) to perform the very re-inspection Mr. Collucci had deemed unnecessary.

32. On or about the same time WJE/Mr. Romero were retained, Michael Gatewood replaced Mr. Deforest as lead adjuster.

33. On information and belief, Mr. DeForest was replaced due to Mr. Deforest having represented 70th and Greenwood's "Loss" was covered and because Mr. DeForest had previously authorized the payment of an earlier claim made by 70<sup>th</sup> and Greenwood that also involved damage to a building envelope component—the Project's weather resistant barrier or "WRB".

34. On information and belief, Mr. Gatewood is a large loss adjuster for Sedgwick whose popularity with Sedgwick's principal clients—multibillion dollar insurance companies—is due to his propensity for finding, and willingness to find, grounds to deny policyholders insurance benefits.

35. Mr. Romero's actions in performing AGCS's investigation were motivated at all times by his desire to provide Sedgwick and AGCS grounds to deny 70th and Greenwood's claim. By way of example not of limitation, before even beginning his investigation Mr. Romero



1 informed 70<sup>th</sup> and Greenwood's principal, Chad Dale, that he was unlikely to find any property  
2 damage.

3 36. Mr. Romero and his team then did everything they could to meet Mr. Romero's  
4 promise to Mr. Dale. For example, WJE's team was observed taking samples of undamaged  
5 portions of Oriented Strand Board ("OSB") directly adjacent to damaged portions, photographing  
6 the least damaged portions of various building envelope components, and otherwise attempting  
7 to create an investigatory record inconsistent with the fact of damage.

8 37. Notwithstanding Mr. Romero and his team's alarming, partisan conduct—which  
9 was contemporaneously reported to Mr. Gatewood—no action was taken by Sedgwick or AGCS  
10 to replace Mr. Romero/WJE or otherwise ensure that an impartial investigation took place.

11 38. Further, notwithstanding that to reasonably investigate the damage to various  
12 building envelope and roofing assembly components required their removal and replacement,  
13 AGCS failed to reimburse 70<sup>th</sup> and Greenwood for any of the investigative costs it incurred.

14 39. As a result of 70<sup>th</sup> and Greenwood's misgivings regarding Mr. Romero's/WJE's  
15 belated retention by Sedgwick/AGCS—all of which were unfortunately proven to be well-  
16 founded—70<sup>th</sup> and Greenwood elected to continue to use Ms. Moe/Amento Group to  
17 investigate.

18 40. After completing the investigation of the damaged building envelope components,  
19 Amento Group published an April 19, 2022 report regarding the damage it observed, its cause  
20 and magnitude, and Amento Group's recommended scope of repair. The report was promptly  
21 transmitted to Mr. Gatewood.

22 41. The April 19, 2022 Amento Group report, which speaks for itself, found that  
23 discrete instances of defective workmanship allowed external water ingress into the Project  
24 which, ultimately, caused extensive, resulting damage to various building envelope components.  
25 Such components include, but are not limited to, the OSB, plywood sheathing, exterior gypsum  
26

1 sheathings, weather-resistant barrier (“WRB”), DensGlass, framing members, and intumescent  
2 paint.

3 42. After completing its investigation into the damaged components of the roofing  
4 assembly, Amento Group published another report. This report, dated October 4, 2022 report,  
5 sets forth the damage observed to the roofing assemblies’ components, its cause and magnitude,  
6 and Amento Group’s recommended scope of repair. The October 4, 2022 report was also  
7 promptly transmitted to Mr. Gatewood.

8 43. Amento Group’s October 4, 2022 report, which speaks for itself, found that a  
9 broken pipe in conjunction with discrete instances of defective workmanship allowed water  
10 ingress that caused extensive, resulting damage to the roofing assemblies’ individual components  
11 including, but not limited to, the WRB, insulation, vapor retarder and roofing membrane.

12 **D. AGCS’s denials of coverage and policy benefit to 70th and Greenwood.**

13 44. On July 15, 2022, AGCS denied coverage to 70th and Greenwood for the  
14 majority of damage to the building envelope’s individual components.

15 45. AGCS’s denial correspondence is premised on the absurd assertion that there is a  
16 monolithic “envelope system” and, because there were discrete instances of defective  
17 workmanship in this monolithic “envelope system,” there can be no covered property “free of the  
18 defective condition ... but damaged as a consequence thereof.” In short, AGCS conflated all of  
19 the individual, damaged components of the Project’s building envelope into one defectively  
20 constructed “system” in an attempt to use the Policy’s defective workmanship exclusion to  
21 preclude coverage for the damage to any of them.

22 46. AGCS’s unreasonable and logic-defying coverage position is further betrayed by  
23 the approximately \$100,000 of coverage it agreed to provide which, according to AGCS,  
24 concerned covered property “other than the project’s envelope system.” However, damage to the  
25 building components that AGCS agreed to cover include components like “floor sheathing at  
26 exterior decks/balconies” that are as much part of the building envelope as any of the other



1 components for which 70th and Greenwood sought coverage. AGCS's arbitrary and capricious  
2 selection of just a few allegedly "non-envelope system" components for coverage is highly  
3 probative to the unreasonableness of AGCS's denial.

4 47. Likewise, notwithstanding AGCS's position that the damaged WRB is but one  
5 giant piece of a defectively constructed "envelope system." AGCS had earlier, when it and 70th  
6 and Greenwood were unaware of the vast majority of damage to the WRB, agreed to provide  
7 coverage for a small section of the WRB that had been discovered to be damaged. However,  
8 when the quantum of damaged WRB changed, so did AGCS's coverage position. This was  
9 grossly unfair and yet another example of the bad faith actuating AGCS's claims handling as  
10 soon as it became aware of the true magnitude of 70th and Greenwood's covered "Loss."

11 48. On October 20, 2022 and December 22, 2022, AGCS sent further denial  
12 correspondence, this time directed at denying all coverage relative to damaged components of  
13 the roofing assembly. Like with its July 15, 2022 denial correspondence, AGCS's subsequent  
14 denial correspondence is premised on the unreasonable, red-herring that all building components  
15 can be conveniently lumped together into a "system" in order to find that a few discrete,  
16 workmanship issues mean that there is no damaged component—or portion of a damaged  
17 component—free of the defective, faulty or inadequate condition ... but damaged as a  
18 consequence thereof.

19 49. It has taken 70th and Greenwood considerable time and expense to prepare and  
20 bring this complaint. In doing so, 70th and Greenwood relied on the bases set forth in AGCS's  
21 denial as setting forth AGCS's true and complete coverage position.

#### 22 **IV. CAUSES OF ACTION**

##### 23 **COUNT ONE: BREACH OF CONTRACT**

24 50. 70th and Greenwood realleges and incorporates by reference each and every  
25 preceding paragraph.  
26

1           51. AGCS conduct as described above constitutes an unreasonable breach of its  
2 insurance contract with 70th and Greenwood. As a result, 70th and Greenwood has been damaged  
3 in an amount to be proven at trial, not less than \$8,574,553 (exclusive of expert and attorneys' fees  
4 and other costs and damages to which 70th and Greenwood is entitled).

5                           **COUNT TWO: COMMON LAW BAD FAITH**

6           52. 70th and Greenwood realleges and incorporates by reference each and every  
7 preceding paragraph.

8           53. AGCS's actions and inactions as described herein were unreasonable, frivolous  
9 and/or unfounded and therefore, constitute bad faith. AGCS's bad faith has directly and  
10 proximately damaged 70th and Greenwood in an amount to be proven at trial, but not less  
11 \$8,574,553 (exclusive of expert and attorneys' fees and other costs and damages to which 70th  
12 and Greenwood is entitled).

13                           **COUNT THREE: PER SE AND NON PER SE CONSUMER PROTECTION**  
14                           **ACT CLAIMS AS AGAINST AGCS**

15           54. 70th and Greenwood realleges and incorporates by reference each and every  
16 Lowell's realleges and incorporates by reference each and every preceding paragraph.

17           55. AGCS's acts and omissions as described above violated multiple provisions of  
18 WAC 284-30-330 including, but not limited to, subsections (1), (3), (4), (7), and (13); such  
19 violations are per se violations of RCW 19.86, Washington's Consumer Protection Act (the  
20 "CPA").

21           56. AGCS's acts and omissions also constitute non-non per se violations of the CPA:  
22 as pled above, such unreasonable acts and omissions were unfair or deceptive; occurred in trade  
23 or commerce; and affect Washington's policyholders and the public interest.

24           57. Such unfair or deceptive acts and omissions directly and proximately caused and  
25 continue to cause 70th and Greenwood to suffer damages in an amount to be proven at trial. These  
26 damages include, but are not limited to, the deprivation of benefits owed to 70th and Greenwood



1 under the Policy and the costs associated with bringing this action for coverage, including court  
2 costs and attorney fees.

3 58. 70th and Greenwood is entitled to recovery of its actual damages, attorney fees,  
4 litigation costs, and treble its actual damages up to the statutory maximum, pursuant to  
5 RCW 19.86.090.

6 **COUNT FOUR: NEGLIGENCE**

7 58. 70th and Greenwood realleges and incorporates by reference each and every  
8 preceding paragraph.

9  
10 59. AGCS owed a duty to 70th and Greenwood to act reasonably and breached this  
11 duty by, at a minimum, failing to reasonably investigate the Claim, failing to reasonably attempt  
12 to resolve the Claim, and/or failing to provide a reasonable justification of AGCS's coverage  
13 position regarding the Claim. As a result, and pursuant to *First State Ins. Co. v. Kemper*, 94 Wn.  
14 App. 602 (1999), 70th and Greenwood asserts an independent negligence cause of action and is  
15 entitled to seek damages in an amount to be proven at trial of at least \$8,574,553 (exclusive of  
16 attorneys' fees and experts costs to which it is entitled.)

17 **COUNT FIVE: INSURANCE FAIR CONDUCT ACT VIOLATION**

18 60. 70th and Greenwood realleges and incorporates by reference each and every  
19 preceding paragraph.

20 61. 70<sup>th</sup> and Greenwood expressly reserves the right to amend this Complaint to assert  
21 claims under the Insurance Fair Conduct Act ("IFCA") pursuant to RCW 48.30.015(8).

22  
23 **V. PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff prays for judgment and relief against Defendant as follows:

25 1. For a judgment for money damages against AGCS in an amount to be proven and  
26 determined at trial not less than \$8,574,553, plus interest at 12%,



1           2.       For treble damages up the statutory maximum as allowed under the Insurance Fair  
2 Conduct Act and Consumer Protection Act.

3           3.       For expert fees and attorneys' fees, and other costs as allowed by statute, common  
4 law and/or Washington regulatory law;

5           4.       Any other and further relief the Court deems just and equitable.

6  
7 DATED this 10<sup>th</sup> day of August, 2023.

8  
9 s/ Tristan Swanson

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